

STATE OF INDIANA)

IN THE LAKE COUNTY CIRCUIT COURT

COUNTY OF LAKE)

CAUSE NO.

45C010310PL00232

STATE OF INDIANA,

Plaintiff,

v.

MICHAEL RYAN, individually and
doing business as MIKE'S HOME
IMPROVEMENTS,

Defendant.

**CERTIFIED MAIL/
POST MARKED 10-08-03**

**COMPLAINT FOR INJUNCTION, RESTITUTION,
COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Roger D. Smith, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1, *et seq.*, for injunctive relief, restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive relief and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c) and Ind. Code §24-5-11-14.

2. The Defendant, Michael Ryan ("Ryan"), is an individual who at all relevant times engaged in business as a home improvement contractor under the assumed business name Mike's Home Improvements, with a principal address at 7823 Hendricks Street, Merrillville, Indiana, 46410.

FACTS

3. Since at least June 27, 2002, Defendant has solicited and entered into home improvement contracts with Indiana consumers.

4. On or about June 28, 2002, Defendant entered into a contract with Raymond and Jeanette Castillo ("the Castillos") of East Chicago, Indiana, wherein Defendant agreed to remodel the bathroom of the Castillos for Six Thousand Four Hundred and 00/100 Dollars (\$6,400.00). A true and correct copy of Defendant's contract with the Castillos is attached and incorporated by reference as Exhibit "A".

5. Defendant failed to provide the Castillos a written contract containing the following information:

- a. the names of any agent to whom consumer problems and inquiries can be directed;
- b. any time limitation on the consumer's acceptance of the home improvement contract;
- c. specification, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- d. the approximate starting and completion dates of the home improvements; and
- e. a legibly printed or typed version of the consumer's and home improvement supplier's name placed directly after or below the signature.

6. Defendant failed to include in the home improvement contract entered into with the Castillos the dates the Defendant and the Castillos executed the contract.

7. Defendant failed to obtain a license and permit from the City of East Chicago for the home improvement work on the Castillos' property.

8. Defendant failed to obtain a plumbing license from the state of Indiana prior to soliciting work with the Castillos as referenced in paragraph 4.

9. At the time the home improvement contract was entered into with the Castillos the Defendant represented by implication that he would perform the removal and replacement of the items referenced in paragraph 4 within a reasonable period of time.

10. Defendant failed to complete the work contracted for in the home improvement contract with the Castillos.

11. The Castillos made a down payment to Defendant of Three Thousand and 00/100 Dollars (\$3,000.00) on or about July 2, 2002.

12. The Castillos made a payment to Defendant of Five Hundred and 00/100 Dollars (\$500.00) on or about July 8, 2002.

13. The Castillos made a payment to Defendant of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) on or about July 12, 2002.

14. The Castillos made a payment to Defendant of One Thousand Four Hundred and 00/100 Dollars (\$1,400.00) on or about July 12, 2002.

15. On or about July 25, 2002, Defendant entered into a second contract with the Castillos, wherein Defendant agreed to install a kitchen floor for Four Hundred Sixty Three and 00/100 Dollars (\$463.00).

16. Defendant failed to provide the Castillos with a written contract for the home improvements referred to in paragraph 15.

17. Defendant failed to start the work contracted with the Castillos as referenced in paragraph 15.

18. On or about July 25, 2002, the Castillos paid to the Defendant Four Hundred Sixty Three and 00/100 Dollars (\$463.00).

COUNT I-VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

19. The services described in paragraphs 4 and 15 above are “home improvement[s]” as defined by Ind. Code § 24-5-11-3.

20. The transactions described in paragraph 4 and 15 are “home improvement contract[s]” as defined by Ind. Code § 24-5-11-4.

21. Defendant is a “supplier” as defined by Ind. Code § 24-5-11-6.

22. By failing to obtain the necessary license and permit prior to the commencement of any home improvement work at the Castillos’ home, as referred to in paragraph 7, the Defendant violated Ind. Code § 24-5-11-9.

23. By failing to provide the Castillos a completed home improvement contract containing the information referred to in paragraph 5 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

24. By failing to provide the Castillos a completed home improvement contract referred to in paragraph 16 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

25. By failing to provide the Castillos with a fully executed copy of the home improvement contract, including the dates the Defendant and the Castillos executed the contract, as referenced in paragraph 6 above, the Defendant violated Ind. Code § 24-5-11-12.

COUNT II-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

26. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 25 above.

27. The transactions referred to in paragraph 4 and 15 are “consumer transaction[s]” as defined by Ind. Code § 24-5-0.5-2(a)(1).

28. Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

29. The violations of the Indiana Home Improvement Contracts Act, referred to in paragraphs 5, 6, 7, and 16 above, constitute deceptive acts by Defendant in accordance with Ind. Code § 24-5-11-14.

30. By failing to complete the work under the Respondent’s contract with Castillos, as referenced in paragraphs 10 and 17 above, Respondent violated Ind. Code §24-5-0.5-3(a)(10) by failing to complete the work within a reasonable period of time.

31. By engaging in home improvement work, as referenced in paragraph 7, without the required license and permit from the City of East Chicago, Defendant violated Ind. Code §24-5-0.5-10(a)(1)(C).

32. By engaging in plumbing work, as referenced in paragraph 8, without the required plumbing license, Defendant violated Ind. Code §24-5-0.5-10(a)(1)(C).

33. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury unless Defendant is enjoined from engaging in further conduct that violates Ind. Code §24-5-11-1 et seq. and Ind. Code §24-5-0.5-1 et seq.

**COUNT III-KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE
CONSUMER SALES ACT**

34. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 33.

35. The misrepresentations and deceptive acts set forth in paragraphs 5, 6, 7, 8, 10, 16, and 17 above were committed by Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendant, Michael Ryan to enjoin from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10-(a)(4) does not include the specifications for the home improvement, a statement that specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

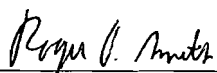
- (6) The approximate starting and completion date of the home improvements;
 - (7) A statement of any contingencies that would materially change the approximate completion date;
 - (8) The home improvement contract price; and
 - (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible or printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to provide a fully executed copy of the home improvement contract that includes the dates the supplier and each consumer executed the contract to the consumer immediately after the consumer signs it;
 - c. in the course of entering into home improvement transactions, failing to obtain the necessary licenses and permits to perform the home improvement contracts prior to the commencement of any home improvement work; and
 - d. in the course of entering into home improvement transactions, representing, expressly or by implication, that Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when Defendant knows or should reasonably know he cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

- a. consumer restitution in the amount to be determined at trial pursuant to Ind. Code § 24-5-0.5-4(c)(2), for repayment of money Defendant unlawfully received from Castillos;

- b. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- c. cancellation of the contracts pursuant to Ind. Code § 25-5-0.5-4(d);
- d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred and 00/100 Dollars (\$500.00) per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred and 00/100 Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,
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